

Potential Legal Concerns Associated with Panelyte and Allied Landfill OU-1

Background

The area of overall concern is located on the near south side of the City of Kalamazoo, Michigan and is generally bordered by Alcott Street to the North, Portage Creek to the East (except for a few selected areas), Cork Street to the South and the Grand Elk Railroad right-of-way to the West. The main parcels within this area consist of the former Panelyte property, currently owned by the State of Michigan Landbank and the former Allied Paper disposal area which is characterized as a federal Superfund site (designated as Operable Unit #1 or OU-1). These parcels cover approximately 90 acres. Historically, the disposal area was contaminated with PCBs associated with the use of recycled carbonless copy paper utilizing ink solvents containing PCBs. In 1998 and 1999, a time-critical removal action (TRCA) was conducted on the former Bryant Mill pond portion of OU-1. Approximately 146,000 cubic yards of PCB-contaminated materials were removed from Bryant Mill Pond and placed on top of existing historical lagoons with an engineered landfill cap. In 2010, then-owner of the site, Millennium Holdings, Inc. filed for bankruptcy protection and a settlement was executed. Currently, OU-1 is owned by a federal bankruptcy trustee. USEPA-Region 5 assumed oversight of OU-1 and published a Feasibility Study in late 2013 which detailed several potential remedies for the OU-1 portion of the property.

Proposed Remedy Selection

City of Kalamazoo staff and consultants have been meeting routinely with USEPA-Region 5 and Michigan Department of Environmental Quality (MDEQ) staff both formally and informally since late 2013. Discussion topics have included: current timeline for remedy selection, status of groundwater monitoring, ownership and access issues for properties adjacent to the Allied Superfund site and possible “hybrid” clean up remedies for the site.

These discussions have been very productive, positive and open regarding a variety of clean up alternatives that include productive reuse and redevelopment of the Allied Superfund site. Key options that have been raised include approximate potential acreage that can be reasonably made available for taxable private development, passive recreational use including trailways and other amenities, configurations of the final remedy that would enhance public access, removal of contaminated waste from the site, as well as the best overall use of the entire site. Costs associated with any of the these “hybrid” options have been briefly discussed along with the need for potential sources of funding should the estimated cost of the final remedy selected exceed funds available in the current bankruptcy trust fund.

One aspect of these ongoing discussions is that USEPA-Region 5 will be doing an extensive amount of groundwater sampling at OU-1 be conducted in Summer 2014. This sampling effort includes at least four new monitoring wells that will seek to address the City's ongoing questions regarding potential impacts on the groundwater and local drinking water aquifer.

Numerous meetings have been held on a biweekly basis since March 2014 and have included, at various times, administrative staff from all three agencies as well as legal counsel. Many details are still being investigated and worked on to arrive at a resolution that is as satisfactory as possible to all interested parties. These discussions continue to demonstrate the cooperation between federal, state and local governmental agencies.

The goal of these ongoing meetings and efforts is to create future productive and acceptable uses of the Allied Superfund (U-1) site that is protective of the environment and adds overall value to the Kalamazoo community.

Legal Questions and Concerns

Three main areas of concern:

- 1) Panelyte property
- 2) Non-waste containing properties
- 3) Waste-containing properties

For each of these main areas of concern, several issues will need to be addressed including:

- 1) Property Ownership - short-term and long-term
- 2) Due Care Issues
- 3) Ongoing Liability Issues/Concerns
- 4) Access and miscellaneous issues (wetlands, easements, etc...)

The main task will be to discuss the blank areas in the matrix below to determine how best to achieve appropriate and adequate redevelopment and reuse of the Allied Site.

Issue(s)/Concern	Property		
	Panelyte Property	Non-waste Containing Properties	Waste Containing Properties
Ownership: Short-term & Long-term			
Due Care Issues			
Ongoing and Future Liability Issues/Concerns			
Access & misc. Concerns/issues (Wetlands, easements, etc.....)			

Some of these issues and concerns may be relatively straightforward and dealt with rather easily. Some of the other issues will take some discussion and investigation to ensure that concerns and issues have been adequately and appropriately addressed.

It is recommended that this document be shared with the respective legal representatives from the USEPA-Region V, the MDEQ, and the City of Kalamazoo. After this document is reviewed, it is recommended that the Small Group, along with their respective attorneys, meet to discuss in detail these issues and to determine what additional information and questions may be necessary to proceed. At some juncture, it is recommended that the attorneys representing the current bankruptcy trustee owners also be included in future discussions.